INVESTMENT TRUSTS AND INVESTMENT COMPANIES

MONDAY, APRIL 15, 1940

UNITED STATES SENATE,
SUBCOMMITTEE ON SECURITIES AND EXCHANGE OF THE
BANKING AND CURRENCY COMMITTEE,
Washington, D. C.

The subcommittee met, pursuant to adjournment on Friday, April 12, 1940, at 10:30 a. m., in room 301, Senate Office Building, Senator Robert F. Wagner presiding.

Present: Senators Wagner (chairman of the subcommittee), Hughes, Herring, Downey, Townsend, Frazier, and Taft.

Senator WAGNER. The subcommittee will come to order. Mr. Bunker?

Mr. BUNKER. Shall I proceed?

Senator WAGNER (chairman of the subcommittee). Yes, will you proceed?

ADDITIONAL STATEMENT OF ARTHUR H. BUNKER, EXECUTIVE VICE PRESIDENT, THE LEHMAN CORPORATION, NEW YORK CITY

Mr. BUNKER. At the close of Friday's hearings it was understood I would produce for the record a memorandum which I had made containing Mr. Schenker's outline to me and my group on January 23, 1940, of the general terms of the proposed investment company bill as it then stood. Also a letter which I wrote to the Securities and Exchange Commission on January 6, 1940. I gladly do so at this time.

Senator WAGNER (chairman of the subcommittee). They will be made a part of the record of our hearings.

(The two printed pamphlets referred to are here made a part of the record, as follows:)

THE PROCEEDINGS OF CONFERENCE HELD BETWEEN MEMBERS OF THE SECURITIES AND EXCHANGE COMMISSION AND REPRESENTATIVES OF THE CLOSED TYPE INVESTMENT TRUSTS, HELD AT THE OFFICES OF THE COMMISSION, 10 A. M., JANUARY 23, 1930.

Present: Commissioner Healy and Messrs. Schenker, Goldschmidt, Smith, and Holland, and representing the Investment Trusts: Messrs. Bartholet, Bellamy, Bullock, McGrath, MacDonald, Jaretzki, Quinn, and Bunker.

Commissioner Healy opened the meeting by stating in general terms the Commission's contemplated plan of procedure. He said that it was not the intention of the Commission to try to ram a bill through Congress but rather to get their recommendations before Congress promptly and let it take its natural course. At the present time he said that the details of the bill had not been discussed between members of the staff and the Commission, although the staff at this time was ready to outline their recommendations to the Commissioners.

He hoped that they would be able to get the bill before Congress by February 1 or in other words, within 1 week. Before this time they were anxious to obtain all views on the recommendations which the staff were making and to that end the staff were instructed to outline to the representives of the industry what they were going to recommend in the way of regulations for the investment trust industry.

Commissioner Healy said that in view of this time schedule it would be necessary to receive the views of the industry during this week. He suggested that these views be first presented to the staff and he further stated that thereafter if a small representative group wished to sit down with the Commissioners for the better part of an afternoon, he would arrange for such a discussion.

There was considerable discussion by the representatives both then and again after lunch after they had heard three-quarters or more of the outline of the bill, about the difficulties of assembling the views of a reasonably large section of the industry and arriving at any considered opinions within such a limited period of time. Commissioner Healy finally suggested that he would agree to the representatives having a further conference with the staff for the purpose of commenting on and criticizing the outline of the bill next Tuesday, January 30 at 9:30 a. m. The representatives advised him that if 1 week was the maximum time which would be allowed in order to assemble their views they would have to confine their efforts to simply informing the larger group of representatives, some 40 in number, of the outline of the bill and advising them that the smaller group would continue to work for its own account but could no longer keep the larger group informed during the period prior to the bill going to Congress as they would be too fully occupied with their own studies in this matter.

Commissioner Healy suggested that there would be an open door with the Securities and Exchange Commission of possibly 3 weeks after the bill has gone to Congress, during which time the Securities and Exchange Commission would be open to suggestions or changes. After that time, or possibly after the actual introduction of the bill by Congress, the matter would have to be fought out in the good old American way before the several committees of Congress.

Commissioner Healy then instructed the staff to outline the bill.

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Mr. Schenker then undertook to outline the bill.

The representatives had agreed among themselves to avoid in general any comments upon the effect of the proposed bill and to confine their questions to seeking for the explanations as to exactly what was intended. In general, this procedure was followed. Mr. Schenker did not read the bill nor disclose the proposed language of the bill but rather gave generalized extracts therefrom

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General definitions.—For the purpose of defining securities, underwriters, etc., the definitions will in general be the same as described in the 1933 act, the 1934 act and the 1935 act. For example, Government securities will be defined as all securities guaranteed by the Government. Any other definition problems will undoubtedly come up and will be dealt with in future.

The biggest problem of definition is that of defining investment trusts. For example, the Commission does not want to catch banks. For example, the problem comes up as to what the First Boston Corporation is. If it isn't an investment trust, what is it?

In general, the staff has agreed that a company with fewer than 100 stockholders is a private company and shall be excluded from the bill. There shall also be excluded banks, common trusts and any real estate company, oil royalty company and investment trusts which are confined to handling funds of employees.

Classification of investment trusts.—This question was regarded by the Staff as complicated. There was a great difference in the minds of the staff between diversified trusts and nondiversified. They were thinking of two broad classifications: The diversified trust would be that trust which never had more than 5 percent of its assets invested in the securities of any one company and never owned more than 5 percent of any one company. In this type there was to be permitted an exemption on the question of owning no more than 5 percent of a company to the extent of a reservoir composed of 15 percent of the assets of the trust, although there was to be no exemption whatever as to having more than 5 percent of the funds of the trust invested in the securities of any one company. Therefore, it would be quite possible to own 100 percent of a number of companies providing the total value of each holding was not in excess of 5 percent of the trust's assets.

Therefore there were two distinct types of trusts in the minds of the staff, one of which was diversified under limitations such as described above, the other is hereafter referred to as a special type of trust, which is simply a trust that does not accommodate itself to such regulations. The staff said that there was a possibility of establishing some third division which would have no limitations at all as to the percentage that could be put into securities or any percentage ownership of other corporations.

Mr. Schenker advised he did not feel that he could recommend a particular form of tax bill but only recommend to the Treasury that there be no discrimination between the tax status of registered diversified trusts. He did agree, however, to recommend to the Treasury that the test of tax preference should no longer be based upon the redemption feature. In other words, open end trusts and closed type trusts of the diversified type were to be treated alike. So-called special type trusts were to have no tax preference. (The problem of whether the Securities and Exchange Commission should recommend a particular form of tax bill was discussed at great length later on.)

Mr. Schenker felt that one of the major purposes of having separate classifications is to let the stockholder know what type of company he is getting into and what the policy of that company will continue to be.

General powers of Commission.—The Securities and Exchange Commission reserves at all times the right to make further classifications as conditions warrant.

There will be exempt from the bill all companies which are intrastate, Hawaiian, Philippine, and other usual exemptions of this order.

The Commission will continue to have the power to grant exemptions in the broadest manner as conditions may arise and warrant, for example, relieving companies from other restrictions of the bill. A condition might arise such as the case under the Utilities Act where the Aluminum Co. had a large power plant and therefore could not be granted any exemptions until the Aluminum Co. itself had registered under the Utilities Act.

Registration.—It is to be unlawful, unless a company has registered, to use the mails, to trade upon the leading exchanges, etc. In other words, complete registration will be forced, the only alternative being liquidation.

There will be provisions with respect to registration that one will be deemed to be registered as soon as one files an application for registration, followed in time by announcement in greater detail what the company's policy will be and what classification the company elects, namely, diversified or special.

There will be provisions for revocation or suspension of registration if after due hearing it is found that there has been a willful violation or failure to comply with the provisions of the act.

Limitation of functions.—Here follows a discussion of the proposed limitation of functions:

1. No investment company may be a broker except to do business for its own account. In other words, it might purchase a seat on the exchange but it could do no business except in matters pertaining to its own portfolio.
2. The company cannot be a dealer in securities, except of its own issues.
3. The company cannot be an underwriter and distributor of securities, although it may be a counderwriter providing all of the securities are acquired for investment only and held for an adequate period of time, but even in this event it is suggested that the company probably will be forbidden to do even this character of underwriting unless it does so through some small subsidiary with a limited liability so as to protect the major assets of the company from the risks of underwriting.
4. The company cannot act as an investment counsel except for affiliated companies. (Affiliated companies are ones in which there exists an ownership of 5 percent or a greater amount.)
5. A company cannot buy securities on margin except for clearance transactions.
6. The status and regulations of any subsidiary are to be exactly the same as those of its parent.
7. The company cannot participate in joint trading accounts. (This problem had not been defined and discussion took place as to whether they would permit joint purchases and joint sales. It was not clear as to whether this would be permitted.)
8. No company can have any interest in the depositor of any fixed trust.
9. No investment trust shall buy any securities of another investment trust.
10. There shall be a provision against any form of circular ownership. For example, Company A, an investment trust, cannot buy shares of Company B, an industrial company, while Company B owns shares of Company A.

11. Affiliated companies and connections. In this matter the staff did not pretend to know what the Commission's views will be but they were prepared to recommend concessions as follows: After 1 year there should be no interlocking officers, directors, managers, or personnel between any two or more investment companies. For the purpose of this definition all the partners of any parternship were to be regarded as one individual.

12. The most controversial subject is that of establishing the relation of those who get the patronage of the investment trust, namely, the principal broker and the manager.

In general the staff felt that it was necessary to deal more severely with the broker problem than with the management problem. In the instance of both the broker and the manager, it shall be forbidden that they shall have a majority of representatives on the board of directors; in other words, there must be a definite, independent majority of the board.

In the case of the broker, he shall definitely not be permitted to hold the office of the principal executive, and possibly of none of the executive offices.

In the case of the manager, the maximum leniency would be to permit him to control the board of directors, although the staff was exceedingly doubtful about granting such permission.

13. There would be permitted interlocking directors between commercial banks, insurance companies and investment trusts, but there would not be permitted any interlocking officers between these groups.

14. The investment trust cannot have as an officer, director or manager, any member of the firm if the banker is an underwriter of any portfolio company. It was not clear whether the company could sell its portfolio holdings if the banker manager was to undertake underwriting securities of the portfolio company. (There was a suggestion that this might be enforced only if the investment trust held more than a certain percentage of the stock of the portfolio company in question. It was also not clear whether this was effective only in the event that the underwriter was one of the principal underwriters.)

Further, no member of a firm can be a director of an investment trust if any member is a director of a portfolio company.

15. The investment trust will not be allowed to purchase any securities from affiliated companies, officers, directors, or 10 percent stockholders, or from any partner who is an underwriter, but in the latter case must wait for more than 1 year after underwriting has taken place.

16. There shall be restrictions as to the formation of open-end investment trusts in connection with the rapidity with which they can be organized. Any individual or group of individuals shall be estopped from forming more than one such company in each 5 years.

17. There must be registration of officers, directors, and principal underwriters, and there shall further be some check by the Securities Exchange Commission as to who can be a director; for example, anyone who has been in jail within the previous 10 years will be stopped from being a director of an investment trust, or if he has been permanently enjoined by some court order from engaging in the investment business in general.

18. The question was again raised as to the revocability of registratior if there was willful violation of any fiduciary duties. Any such act of revocation, however, was to be disputable in the courts.

19. The staff was trying to establish some standard of personal liability for officers and directors to stockholders. It was suggested that such might be the same as the responsibility of the trustee under the Barkley bill.

20. There shall be no self-dealing, neither purchases from nor sales to, nor borrowing, nor any form of credit extension.

21. However, in investment trusts systems which already exist, there may be some transactions between companies but only upon an order from the Securities Exchange Commission.

22. A manager cannot act as an agent except as a broker of securities under standard fees. For instance, he cannot act as a real-estate broker or as a custodian, etc. (The staff was very uncertain about this restriction.)

23. *Management contracts.*—The present tendency of the staff is not to abolish management contracts, although there is very strong feeling to do so. No other country in the world has such an instrument and the usual practice is to manage on a basis of flat salaries. This is such a controversial subject that the Commission may reverse the staff. On the other hand, the staff is ready to recommend that management contracts of the following type be allowed:

(*a*) Compensation for a definite sum of money.

(*b*) Compensation fixed upon a percentage of the company's ordinary income, meaning dividends and interest.
(*c*) A percentage of the average net assets.
(*d*) Or, a combination of the above alternatives.

24. If a company has no manager, it may compensate its officers or managers on any of the bases above.

25. No management contract may be entered into for a period greater than 1 year and must in each instance be approved by more than 50 percent of the outstanding stock. It must be in writing and must fully describe all of the terms and compensation. Furthermore, it may be terminated by the company's directors at any time upon 60 days' notice. It shall be nonassignable. It shall be terminated automatically if the control of the company changes. Furthermore, the board of directors cannot completely delegate ultimate responsibilities, or, for example, it could not vote to turn over complete management to some body other than themselves.

26. The company shall be prohibited from changing more than one-third of the members of the board of directors between special stockholders' meetings called for such purposes.

27. It shall be forbidden to change the fundamental nature of the business, for example, from that of a diversified trust to a special trust, without first securing stockholders' approval.

28. *Capital structure.*—It shall be provided that hereafter the only class of investment trust security which may be issued will be common stock. It shall be forbidden to issue preferred stock or debentures and all such common stock must have voting privileges and carry preemptive rights (the latter being true, of course, except for redeemable securities).

It shall be forbiddne to sell common stock for less than net asset value. There shall be some separate treatment of this problem in the matter of issue of stock for property, etc.

No securities of any investment trust can be distributed unless it already has a net worth of $100,000.

There shall be established a maximum size for investment trusts of $100,000,000. This shall only apply in the matter of selling new securities.

29. With respect to all companies remaining in the business over a period of 5 years, they shall have only one class of securities, namely, common stock.

30. No company may issue any warrants, except short-term warrants of a maximum dating of 120 days.

31. Proxy requirements shall be the same as the 1934 and 1935 acts.

32. The company shall be prohibited from selling voting trust certificates at any public offering.

33. The staff requested that the representatives of the industry make counter suggestions on what limitations on capital structures should now be made and how voting rights shall be recast.

34. In the case of American investment trusts controlled by foreign interests, it should be unlawful for any foreigner to vote his stock if such foreigner owns more than 5 percent thereof. (It was suggested that this matter involved not only the Securities and Exchange Commission but the State Department and several other departments.)

35. The payment of dividends shall be governed by the 1935 act and it shall further be provided that no dividend shall be in contravention of the Securities and Exchange Commission rules. Regarding payment out of capital, etc., dividends could only be paid out of earned surplus and capital gains could only be distributed if they were clearly identified as capital gains.

36. Loans could only be made if consistent with the financial policy of the company and only as the result of arms-length bargaining.

37. No investment trust can borrow except on its short-term commercial paper and then not in excess of 1 percent of its total capital. In an emergency it can make application to the Commission for an exemption to this rule.

38. Repurchases of the securities of closed-end companies shall be accompanied by full disclosure of the asset value. The staff is trying to work out some plan with respect to this problem but is very much puzzled at the present moment.

39. It shall be provided that registration under the Securities Act can be accomplished by using the basic registration under the proposed investment trust act.

40. In matters of reorganization, voluntary dissolution, or any offers of exchange, plans must be filed and permission obtained from the Securities and Exchange Commission.

41. In the matter of representative stockholders' suits, there was a strong feeling that in connection with settling these suits, the Securities and Exchange Commission must be heard in court.

42. There would be a provision for formal reports to the Commission on a periodic, quarterly basis, and also special reports required under certain contingencies. Undoubtedly there would also be required supplemental reports by any manager of an investment trust. These reports would be a substitute for the present form 15-K of the 1934 act. All of these requirements would establish a law for minimum information.

43. The accounting systems would accord with the present Holding Company Act, giving to the Commission the constant power to examine, prescribe form, etc.

44. There would be a catch-all provision giving the Securities and Exchange Commission power to promulgate further regulations as conditions arose. For example, it might be necessary to establish regulations in connection with salesment for open-end or installment-company securities, for bonding officers and employees, for sponsors leasing office space to companies, for voting portfolio securities by the management. At the moment they are willing to leave these matters in status quo, but wish to retain the right to prescribe further regulations at any time it may appear necessary.

45. Tax preference is to be given to registered companies. Again staff suggested that it was not in their province to write a specific tax bill for the Treasury Department. A great deal of discussion ensued on this point. The representatives of the industry felt the contrary to be true. It was pointed out that for the past 4 years representatives had discussed the tax matter with the Treasury Department and while they had their sympathy, they had on every occasion had it pointed out to them that the Securities and Exchange Commission was the only branch of the Government that had fully informed itself in the matter of investment trusts and that any suggestions should emanate from that body. It was further pointed out that if the Securities and Exchange Commission simply recommended to the Treasury Department that the same relief from taxation be accorded to the closed-type companies which was now accorded to the open-end companies, that in fact the closed-type companies would obtain no relief at all, and it would only insure their continual and constant liquidation. It was suggested that it should become the duty of the Securities and Exchange Commission to point out to the Treasury Department the fundamental difference between any company which was engaged in constantly selling its securities and the other type of companies, namely, the closed-end type. It was suggested that the industry send down copies of the memoranda which they had submitted to the Treasury Department in this matter and that the staff would undertake a study of this problem.

THE LEHMAN CORPORATION,
New York, January 6, 1940.

Commissioner ROBERT E. HEALY,
Securities and Exchange Commission, Washington, D. C.

DEAR COMMISSIONER HEALY: It seems to me that it might be helpful to both of us at this time to review in a very general way the activities of the so-called Investment Trust Committee with relation to the Commission and its study of investment trusts.

It is a little over 4 years now since your Commission began its study of investment companies. At the very beginning, you asked us to form such a committee. That committee workea with you and your staff on the initial questionnaire, to its satisfaction and, I trust, to yours. You stated at that time, and have repeated on several occasions since, that it was your purpose to discuss your conclusions in full with our committee before submitting any recommendations to Congress.

In April 1938, a conference was held between your staff and our committee on the question of procedure. At that time your staff suggested that we form a subcommittee for the purpose of working with you and your staff when the time should come that you wished the considered views of the industry on the proposed regulations. Mr. Bartholet and I were asked to serve as the committee.

If various recent press comments are true, it would appear that your factual reports on the study are nearing completion and that you may soon begin with the task of writing your recommendations to Congress. If that is the case, the question of timetable and procedure becomes extremely important.

When Mr. Bartholet and I discussed this subject with you and Mr. Schenker on March 1, 1939, you again emphasized that you would prefer to work through

a committee rather than to have discussions on the subject with representatives of individual companies and groups. In general, you expressed the desire to have substantially the same procedure followed that was adopted in connection with the initial questionnaire. We called your attention to the fact that the work which we did on the questionnaire absorbed the better part of the time of a number of people for over 6 weeks, and expressed our opinion that the task of assembling the views of the industry on this far more important subject of proposed regulations would undoubtedly require a somewhat similar period of time. In this connection, we undertook to form a group of representatives of as many of the closed-end companies as possible. We did not, however, at our meeting on March 1 establish any timetable or schedule for the purpose of effecting our cooperation.

Later, on May 16, 1939, after we had had several talks with representatives of the companies which we represent informally, Mr. Bartholet and I went to Washington at Mr. Schenker's request, for a general discussion of the procedure which was to be followed in connection with these recommendations. We pointed out to the staff at that time that we thought it would be impossible for us to present to them the considered views of investment company representatives on the subject of legislation and regulation if sufficient time were allowed us but suggested that it would be of great benefit to us if it were feasible for the Commission to write out some plan of procedure which was agreeable to it. This seemed desirable to all those attending the conference, and Mr. Schenker was to consult with the Commission and advise us further. The Commission was, I believe, very fully occupied at that time with matters of internal change, and after a series of telephone calls with Mr. Schenker, it became evident that no plan or schedule could be developed at that time.

However, it now seems to us essential that this question of a plan of cooperation should be resolved. Mr. Bartholet and I informally represent a very large section of the business and we are concerned that we should be able effectively to discharge our responsibility to the other companies. Our relations with the industry are all upon an entirely informal basis, the very nature of which could easily lead to misunderstanding. At the present time, these various individuals are relying upon the opportunity to express through us their views and criticisms upon such recommendations as the Commission proposes to make to Congress, before such recommendations are submitted to Congress.

In an understanding of this sort, time is of the essence. If, for example, we were notified one day to be in Washington the next to hear the recommendations, to report back to the industry within another day, and return to Washington with views of the industry upon the third day, the situation would not be capable of fulfillment. Altogether in our group are directly represented between thirty and forty companies. It is necessary to have a few days' time to even get such a large group together. Then, to obtain their considered and diverse opinions on a matter as controversial as that of regulation of their trusts, should call for a series of meetings, debating involved questions.

Mr. Bartholet and I do not doubt that, if given adequate time, we could perform this task, namely to assemble and refine the collective view of the industry as to any suggested recommendations.

In our opinion, however, the very nature of the problem and the large number of people with whom we must confer would require a certain amount of time to produce any considered and thoughtful opinions, representative of the business.

We are extremely anxious to cooperate with the Commission in this matter. But we do feel that the above matters are of such importance that we should call them to your attention and ask you to be kind enough to give us an early expression of your opinion.

Sincerely yours,

A. H. BUNKER.

POSTAL TELEGRAPH

Telegram from Washington, D. C.

JANUARY 19, 1940.

Mr. ARTHUR H. BUNKER,
The Lehman Corporation, 1 and 3 S. William Street,
New York, N. Y.:

Am prepared to discuss on Tuesday, January 23, 10 a. m. with your committee major aspects of staff proposed recommendations to commission. Shall also discuss procedure with you at that time.

ROBERT E. HEALY.

Mr. BUNKER. Now, Senators, there was some discussion at the last hearing regarding the opportunity the industry has had to discuss this proposed legislation with the Securities and Exchange Commission. I am very glad this matter has been brought up, since there seems to have been the feeling that our industry has had full opportunity, perhaps every opportunity, to discuss the bill with the Securities and Exchange Commission. That is not so.

Insofar as the facts are concerned I do not believe there is any dispute between Judge Healy and ourselves, but I do feel that the crux of the matter has not been brought to light. We do not in the slightest degree challenge anything Judge Healy and Mr. Schenker said in this respect but we do not believe the situation is clear before the members of this subcommittee.

The facts, which are unchallenged, however, are these: We did not have adequate opportunity for preparation before the conference with the Securities and Exchange Commission in January. We did not have an adequate opportunity to present our case when we did appear. And we have never seen this, or any other bill, until it was introduced on March 14. Rather, a memorandum which I am herewith submitting, shows that for 2 years we have made every effort to secure an opportunity to collaborate in the preparation of a bill; and you will see that we protested to the limit of our ability against the haste and the lack of opportunity to so cooperate. Once again this was reiterated by me on January 30 in my appearance before the Commission, and I should like to introduce for the record a copy of my statement made at that time.

Senator WAGNER (chairman of the subcommittee). That will be made a part of the record of our hearings.

(The printed document referred to and entitled "Opening Statement Made by Arthur H. Bunker at Meeting Tuesday, January 30, 1940," is here made a part of the record, as follows:)

OPENING STATEMENT MADE BY ARTHUR H. BUNKER AT MEETING TUESDAY, JANUARY 30, 1940

Present: All Commissioners of Securities and Exchange Commission except Chairman Frank, also Mr. Schenker and members of staff.

Before proceeding with such discussion of the proposed legislation in respect of investment trusts as the limited time at our disposal makes possible, we would like to protest respectfully but vigorously against the procedure and time schedule which has been outlined to us.

For a period of over 4 years the investment trust industry has been cooperating with the Securities and Exchange Commission in its investigation of the industry. Valuable help was accorded to the staff in the preparation of its questionnaire at a time when the staff was as yet unfamiliar with the basic problems and could not by itself have prepared as thorough-going and useful a questionnaire. After that the industry voluntarily made available to the staff of the Securities and Exchange Commission a mass of information which would have taken years to adduce by ordinary legal processes. Full cooperation was given at public hearings.

All this was gladly done. It was done, however, with the expectation that full opportunity would be given to the industry to discuss with the Commission and its staff any proposals for regulation of investment trusts. In line with this understanding we were called to Washington 2 years ago to initiate discussions in regard to basic principles and details of regulation. One preliminary meeting was had. We have ever since been waiting, ready and willing to come down to continue these discussions, have repeatedly expressed our readiness to do so, but have been told that the matter was not ready for discussion until just 1 week ago when we were invited to Washington and the barest outlines of the bill were given to us.

We were told we could have only a few days to submit our views. Frankly we were surprised. We have for 2 years made every effort to insure adequate time for this phase of the work, and even wrote you in December asking for adequate time.

We earnestly protest that we are entitled to this opportunity for discussion and we urge on you strongly that some such procedure is the only orderly way to go forward. After having spent 4 years in investigating investment trusts we are frankly surprised that the Commission is unwilling to set aside a few weeks to discuss the soundness and practicability of its proposals with representatives of the industry. We had believed it to be your desire to go to Congress and state that you were submitting proposals for the regulation of investment trusts reached after having given representatives of the investment trusts an opportunity to be heard. In our opinion this does not constitute a hearing. It is true that there have been statements of a general nature made by various persons appearing in the investment trust study hearings, but there has been no discussion of the details of legislation and above all there has been no testing of the legislation proposed by your staff against the background of practical experience in the management of investment trusts.

True, it has been said that the door will not be closed upon the presentation of your recommendations to Congress, that thereafter not only will we have the constitutional right to be heard before Congress, but that the doors of the Commission itself will be open for further discussion of the proposals. But what does this mean? Certainly it is a very different thing from hearings before recommendations have been released. It means that the Commission is proposing to make recommendations to Congress first and discuss such recommendations afterwards. And it must mean one of two things. It must mean either that the Commission is admittedly premature in making its recommendations or else that the Commission feels that it has completely explored the subject and therefore the suggestion for later conferences will be futile. We admit we have no right to be heard in the matter, but we wish to go on record that the course we have suggested seems the only reasonable one.

In the hurried time at our disposal we have divided into three categories the individual items of the proposed legislation as outlined by Mr. Schenker last week.

These classifications consist of—

(a) those items which commend themselves for approval;
(b) those items which we believe are susceptible of satisfactory modification;
(c) and that final group which we believe should be disapproved completely.

There are a substantial number of provisions of which we approve, and more which we believe to be susceptible of satisfactory modification, and very few which we believe should be completely eliminated.

We cannot overemphasize to the Commission that our group is fundamentally sympathetic to promulgating regulations that will eliminate the many abuses that have been disclosed by your four years' study. But just as firmly we believe that this should be done while still leaving the investment trust free to function in an important way in the national economy.

We believe that this can be done, but do not believe the form of your contemplated bill is the means. It is our opinion that your recommendations go far beyond any necessary restrictions; recommendations which if applied to industry in general would induce general paralysis and stagnation.

We feel that the investment trusts with their $4,000,000,000 have been almost sterilized as a supply of capital for business.

This situation is indeed serious for our industry.

If we were to explore the objectives of the Commission, it might well be we would find them not far from our own. If this should be the case, given time, it should be possible to work out regulations that would achieve these objectives and still stand the test of practical experience in the management of trusts.

We are prepared to discuss in greater detail some of the more controversial aspects of the proposed bill. Before we do this I think Mr. MacDonald would like to make a general statement in behalf of the International Bankers Association. It just happens that in addition to being a member of our small group, Mr. MacDonald is chairman of the investment trust committee of the International Bankers Association.

Mr. Bunker. Mr. Schenker outlined to us then the general scope of the proposal he intended to make to the Securities and Exchange